



Age Discrimination – Your Rights

What Does the New Jersey Law Against Discrimination (LAD) Say About Age Discrimination?

The New Jersey LAD generally prohibits employers and labor unions from discriminating based on age, and prohibits age discrimination in business transactions. "Age discrimination" refers to both discriminating against people because they are older than others, and discriminating against people because they are younger than others. However, there are some exceptions to the New Jersey LAD's employment protections for people who are under age 18 or over age 70; these exceptions are explained below.

What are My Work Rights?

In general, it is against the law for an employer to treat you differently, on the job, or harass you, because of your age. In addition, it is unlawful for an employer:

- to refuse to hire you because of your age
- to fire you or lay you off because of your age
- to force you to retire because of your age

Applying For a Job:

In general, your age must not be used as a reason to prevent you from applying for or getting a job, promotion, apprenticeship or traineeship, unless you are under age 18 or over age 70. If you are between age 18 and 70, an employer may not consider your age in making hiring or promotion decisions.

EXCEPTIONS:

Although the New Jersey LAD generally requires that all jobs must be open to people of all ages, there are some exceptions. For example, the New Jersey LAD does not prohibit:

- refusal to hire someone who is under the age of 18,
- refusal to hire or promote someone who is over 70 years of age (although federal law may prohibit this type of discrimination in some cases),

- refusal to hire people over a certain age, where other laws, such as pension laws applicable to certain law enforcement positions, set maximum hiring ages for those positions, or
- advertising for and hiring someone of a particular age where age is a "bona fide occupational qualification" for a particular job (in other words, age is an essential and relevant part of the job). For example, it may be permissible to limit applicants to people of a certain age group for authenticity in hiring an actor for a particular role in a play.

During Employment:

An employer may not discriminate based on age in making decisions regarding job assignments, pay levels, employee benefits or other terms, conditions or privileges of employment. In addition, an employer may not discharge or demote you because of your age.

EXCEPTIONS:

- An employer may refuse to promote you to a higher position if you are over age 70. However, the employer cannot treat you less favorably than other employees in any of the terms or conditions of your current job, even if you are under 18 or over 70.
- Age may be used as a factor in the operation or terms and conditions of a bona fide retirement, pension, employee benefit or insurance plan, provided the provisions of the plan are not used to establish an age for mandatory retirement.

An employer may not harass you or permit others to harass you because of your age; this includes making or permitting derogatory comments about your age, and permitting people to interfere with your work because of your age.

In Retirement:

In general, an employer cannot set a specific retirement age for employees, or force you to retire because of your age.

EXCEPTIONS:

- An employer can require the retirement of an employee who for the two prior years has been in an executive or high policy-making position, as long as the employee is entitled to a pension package that pays at least \$27,000 a year;
- The New Jersey LAD allows for the mandatory retirement at a certain age for people who hold certain positions, such as judges or tenured employees of colleges and universities;
- Some other laws, such as pension laws applicable to certain law enforcement positions, set mandatory retirement ages for those positions.

What are My Rights with a Union?

You may not be excluded or expelled from membership in a union because of your age. Also, as a member of a union, you may not be treated differently in any way because of your age, except that a union may establish a reasonable minimum age for a person to be included in an apprentice or training program.

What are My Rights in Business Transactions?

The New Jersey LAD prohibits refusal to do business with a person because of age. This includes buying, selling, leasing, licensing, contracting, trading, or providing goods, services or information. It is also unlawful to include any provision in contracts, letters of credit, or any other documents for transfers of funds or credit, which requires discrimination based on age.

EXCEPTIONS: Age discrimination is not unlawful where a proprietor or other person is acting in compliance with laws that set minimum ages for engaging in certain business transactions, such as laws that prohibit the sale of cigarettes or alcoholic beverages to people below a certain age. In addition, the New Jersey LAD does not prohibit businesses and other public accommodations from restricting access to people of certain ages, or charging different prices based on age.

Am I Protected From Reprisal or Retaliation?

Yes. The LAD also prohibits reprisal or retaliation because an individual made a good faith complaint about discrimination or harassment based on age, or assisted someone else in making such a complaint.

What Should I Do Next?

When the parties are unable to resolve a dispute themselves, the law provides two basic ways to seek relief under the Law Against Discrimination.

Administrative remedy:

The Department of Law & Public Safety, through its Division on Civil Rights, is responsible for enforcing the Law Against Discrimination (LAD). If you believe that you have been the victim of unlawful discrimination, please visit or phone us at the Division on Civil Rights office closest to where you live or where the discrimination occurred. Our addresses and phone numbers are at the end of this fact sheet, or visit us on the web at www.NJCivilRights.gov.

A complaint must be filed with the New Jersey Division on Civil Rights within 180 days of the act of discrimination. An initial evaluation will be conducted to determine if you state a claim for relief under the LAD. If so, the Division will prepare a complaint for you to sign and then the Division will conduct an investigation into your allegations. If the investigation shows enough evidence to support your complaint (known as probable cause), and your complaint cannot be settled, a hearing will be held in the Office of Administrative Law. You may choose to retain a private attorney to represent you at the hearing, or a lawyer will be provided to prosecute the case on behalf of the New Jersey Division on Civil Rights. At the conclusion of the hearing, the Director of the Division on Civil Rights will make a final decision as to whether unlawful discrimination has been proven and, if so, what remedies should be awarded to the complainant. Other than fees for a private attorney, if applicable, there is no cost to the individual for these services.

Judicial Remedy:

In the alternative, an individual who believes he or she has been discriminated against in violation of the LAD may file a complaint and try his or her case in New Jersey Superior Court. Individuals usually hire an attorney to represent them in a Superior Court action. A party cannot file with the Division on Civil Rights and in Superior Court at the same time. A Superior Court action must be filed within two years from the act of discrimination.

What Remedies Are Available?

In employment cases, a prevailing complainant may be entitled to be placed into the job he or she was unfairly denied, with back pay and interest; restoration of employee benefits that the complainant would have received but for the unlawful discrimination; damages for pain, humiliation, and emotional distress caused by the unlawful discrimination; reasonable attorney's fees if the complainant was represented by counsel; and out-of-pocket expenses associated with pursuing the complaint.

In addition, the Division may impose penalties on the party who violated the LAD of up to \$10,000 for the first violation, up to \$25,000 for a second violation within 5 years, and up to \$50,000 for third and subsequent offenses within 7 years. These penalties are payable to the State, not the complainant. Punitive damages are only available in Superior Court actions.

Remember, it's against the law for anyone to retaliate against you because you have exercised your rights under the New Jersey Law Against Discrimination.



NJ Office of the Attorney General

CIVIL RIGHTS

The Department of Law & Public Safety, through its Division on Civil Rights, is responsible for enforcing the law. To file a complaint, contact or visit the office nearest you:

Atlantic City Regional Office:

1325 Boardwalk, Tennessee Ave. & Boardwalk
Atlantic City, NJ 08401

Phone: (609) 441-3100 • Fax: (609) 441-3578

Camden Regional Office:

One Port Center, 4th Floor, Suite 402
2 Riverside Drive, Camden, NJ 08103

Phone: (856) 614-2550 • Fax: (856) 614-2568

Newark Regional Office:

31 Clinton Street, Newark, NJ 07102

Phone: (973) 648-2700 • Fax: (973) 648-4405

Trenton Regional Office:

140 East Front Street / P.O. Box 090
Trenton, NJ 08625-0090

Phone: (609) 292-4605 • Fax: (609) 984-3812

Visit our web site at www.NJCivilRights.gov